

In the High Court of Travancore, Cochin.

Safore

The Hon'ble Shri Joseph Vithayathil, Judge.  
\* The Hon'ble Shri P.P. Wandana Menon, Judge.

A.S.No. 2 of 1953.

C.C.No. 79 of 1950 of the Kottayam District Court.

Appellant: Defendant. Krishna Pillai Gopala Pillai  
residing in Lakshmi Bhavan Bungalow, known also  
Iliparambil House, Veloor Kera, Kottayam Pakuthy,  
Kottayam Taluk.

By advocate Sri C.K. Sivasankara Panicker.

Plaintiff: Respondent.

Narayana Pillai Gopala Pillai, Anduvellil Veedu,  
Koduppunna Kera, Kozhimuttu Pakuthy, Ambalapuzha  
Taluk.

By advocate Sri P. Govindan Nair.

This appeal having been finally heard on 5. 7. 1953  
the court on 12th July 1953 delivered the following

Judgment.

Vithayathil & Mandana Menon JJ.

No. 114 of 1953.

Judgment.

Delivered by Mandana Menon, J.

This appeal arises out of a suit for recovery of accounts due as per accounts, the defendant being the appellant. The suit was filed by the plaintiff who was the proprietor of a hotel called S.K.V. Mohan's Hotel at Coimbatore claiming that as per dealings between himself and the defendant as evidenced by the accounts kept by him Rs. 2500. 0. 0 was due to him. The defendant while admitting dealings with the plaintiff denied his liability for any amount. The lower court upheld the plaintiff's claim.

Exs. 1 to 5 are the relevant pages in the ledger kept by the plaintiff denoting the transactions with the defendant. Ex. 1 of 1121, Ex. 2 of 1122, Ex. 3 of 1123 and Ex. 4 of 1124. Ex. 5 shows that the S.K.V. Hotel was purchased by the plaintiff only in 1120. Exs. 1 to 5 show the Day Book entries of the relevant transactions. The accounts drawn on the basis of these accounts consist of various bills & invoices. Besides being the proprietor of the S.K.V. Hotel the plaintiff was a partner in a hotel called Ananda Mandiram and had a provision store called Velour Store. According to the plaintiff, the defendant had transactions with all these three concerns and he had agreed to the amount due as per his dealings with Velour Store and Ananda Mandiram Hotel to be brought into the S.K.V. accounts, thus there being a consolidated account showing the state of dealings with the defendant. So the accounts now claimed are items composed of debt due as a result of direct transactions with the S.K.V. Hotel and those due as per dealings with the other two concerns. The accounts of the plaintiff clearly go

to support the plaint claim. On behalf of the defendant it is contended that as only the plaintiff has gone into the box to prove the accounts the <sup>an</sup> same have not been properly proved and the entries cannot be relied upon. What is urged is that under section 34 of the Evidence plaintiff alone is not competent to prove the accounts. It is pointed out by the learned District Judge, the account on the face of it does not create any suspicion and is seen to be regularly kept. The effect of section 34 is that a mere entry in an account book by itself is not evidence of any liability. In the commentaries to the Evidence Act under section 34 (page 362 of the 2nd Edition) Garner observes as follows:-

"Section 34 of 1, lays down, that a plaintiff cannot obtain a decree by merely proving the existence of certain entries in his books of account even though kept in the regular course of business. He will have to show further by some independent evidence that the entries represent honest and real transactions and that the same were kept in accordance with those entries. No particular form or kind of evidence in addition is required. Any relevant facts which can be treated as evidence would be sufficient corroboration, if true. A tally for corroborating may take the shape of vouchers, receipts or other documentary evidence or sworn oral testimony".

On there is no force in the argument that because the writer of the accounts not examined or the original accounts of the Velour and Ananda Mandiram concerns had not been produced the plaintiff should be non-suited. Here, apart from the books and the oral evidence of the plaintiff, there is other independent evidence adduced by him to support his claim. The question is whether such evidence is reliable enough and sufficient to corroborate the entries in the accounts of the plaintiff.

3. Of the various items included in the plaintiff's accounts, objection is taken to the transfer of the alleged amounts due as per transactions with Velour Store and Ananda Mandiram, to the taxi charges claimed, to amounts stated to have been handed over to one Pachu Pillai and Sivamankara Pillai, the debiting of the amount due to the plaintiff under



a small cause decrees from Pw.8 claimed to have been debited against the defendant as directed by him, the amount debited in connection with a Arivendran Trip, and advance alleged to have been made in cash. Regarding the transfer of debit shown in Ananda Mandiram and Velloor accounts to the S.N.V. Hotel, the plaintiff deposes that this was done as per defendant's ~~six~~ instructions. In 1121 on 6th Vrischikam there was a transfer of Rs.175 ch. 7 ca. 4 from Velloor account. Further such debits ~~also~~ are seen. On 10th Vrischikam the total debit shown against the defendant's name came to Rs.572. 4. 4. Rs.1500 was paid as per cheque by the defendant on the 10th day and Rs.1000 taken back. The balance then due is shown in the account as Rs.72. 4. 4. This has been included in the day to day debits after that. Now, if the transfer of Velloor account debits had not been made there would have been only a credit in favour of the defendant. Thus the very payment of Rs.500 on 10th Vrischikam shows that the defendant had consented to the transfer of the amount due from him to the Velloor Store to the consolidated accounts kept in the S.N.V. Hotel. Further, in view of the series of debits on the basis of transfer from Velloor and Ananda Mandiram accounts, ~~and~~ the payments made by the defendant towards the transactions with the plaintiff go to indicate that all the transfers made as well as the correctness of those debits must have been approved by the defendant. Thus on 15th Mesam 1122 the ledger shows a payment of Rs.1500 by the defendant as per a cheque. After that, there was only a sum of Rs.164. 34. 4 remaining as balance due from the defendant. Now, prior to that date, as pointed out before, there had been several debit entries on the basis of the -  
✓ *To Velloor and Ananda Mandiram stores the money paid*  
accounts due to Pachu Pillai and Sivashankara Pillai, and an item debited in connection with the tea party. If the debts evidenced as per these entries were not true ones there was no necessity of paying Rs.1500 on 24th Mesam as so much debt would not have been outstanding against the defendant.

The defendant examined as Ex.1 has no case that the amounts shown as paid by him in the account of the plaintiff were not really paid but were entered there with an ulterior motive. Further the accounts show that these payments were as per check no. that he says is that he used to pay when bills came and never checked the accounts. Such a statement is not enough to rebut the presumption to the effect that a person is not likely to pay amounts much more than what was really due. Apart from this there is other corroborative evidence in support of the plaintiff's accounts. Ex.2 deposes to his contracts in connection with the defendant's daughter's marriage, and says that he put a pandal in connection with the house warming ceremony of the defendant. The plaintiff deposes that the house warming ceremony was in Vrishchikam 1123 and the marriage in Adavam 1124. So as pointed out by the lower court, the expenditure in connection with the said party debited on 20th Vrishchikam 1123 as well as the advance of Rs.2000 on 26th Adavam 1124, as shown in Ex.1 is as probable. There is the debt in connection with the satisfaction of the said decree against Pw.6. Ex.3 is the copy of the execution petition filed by the plaintiff and Ex.4 that of the petition to enter satisfaction. The satisfaction petition is dated 27.10-1128. In the ledger a debit of Rs.51.11 is seen made on the same day. Pw.5 has no case that he will pay the debt in full. What he says in his cross-examination is that he used to pay in instalments of Rs.10 but stopped after some time. Certainly, the plaintiff would not have filed a satisfaction petition under such circumstances unless there was some such arrangement as was made by him. Accordingly the plaintiff the Rs.2000 debited on 20th Adavam 1124 in Ex.1 was not a lump payment of the said amount but was comprised of Rs.300 given on 19.10.1124, Rs.700 on 20.10.1124 and Rs.1000 on 22.10.1124. Pw.5 who admits that he is residing with the defendant says -

that he received \$2,300 as per Ex.B slip on 19. 10. 1124. His case is that the amount was taken and handed over to the plaintiff. This was never believed. Regarding \$2,700 there is the evidence of Ex.4 to support the plaintiff. The defendant admits that he spent large amounts in connection with his daughter's marriage in that Estate. But according to him all the amounts were kept with him in cash and none of these payments was received. As there is no evidence to support his claim that he had all the funds at his disposal without resorting to outside help it is difficult to believe him on this point.

4. Then we come to the various letters of the defendant. The earliest letter is Ex.C dated 11. 8. 1122. It is a request for an advance of \$2,1000, there being an admission of arrears of prior debts remaining to be paid on that date. According to the plaintiff this is the debit shown on that date as 1123 in his ledger. When confronted with this what the defendant says is that he ~~did~~ <sup>could not</sup> remember whether he received the said amount without reference to his accounts ~~on that date~~ <sup>on account</sup> ~~on account~~ <sup>on account</sup> say what the prior arrears were. Ex-L is dated 15. 8. 1123. There it is stated that the letter sent by the plaintiff was received and the amounts due to the plaintiff should be paid at the earliest opportunity. The lot of words is clear - that the defendant was finding it difficult to clear off the debts due to the plaintiff. The defendant's own case from the box is that he had no necessity at all to receive any sort of help from the plaintiff. Ex.K is a letter dated 3. 4. 1124 by the - defendant admitting receipt of a bill sent and promising to discharge the outstanding liability soon. Then there is Ex.M dated 12. 12. 1124 being a letter sent by the plaintiff with an endorsement by the defendant. That also shows that demands were being made by the plaintiff. Ex.N is dated 22. 7. 1149 also denotes that a demand for payment had been made by the plaintiff and that the defendant was asking to



be excused for the delay. The defendant's attempt from the box to put some other meaning on that letter can never be accepted especially in view of the fact that none of the letters admitted by him to have been received from the plaintiff has been produced. Ex. 2 is dated 18. 3. 1947. It is a letter to an advocate at Kottayam. There is a statement by the defendant there that he was borrowing Rs. 2000 from the plaintiff and starting. The defendant does not say that the letter is not his but only denies having received any amount from the plaintiff as stated there. Ex. 3 is the reply notice containing a denial of any liability as alleged in the plaintiff's notice. From the box the defendant says that it was he who was holding the plaintiff's by advancing Rs. 1500 to purchase the S.V. Hotel and standing surety for the balance. Ex. 3, the prior notice of the Hotel, deposes that he sold the hotel to the plaintiff for Rs. 5500. According to him it was the defendant who negotiated the matter but he does not say that he brought the witness by the defendant or that he stood surety for the plaintiff. Thus it is seen that the plaintiff has produced accounts which are correctly regularly kept as contemplated under section 34 of the Evidence Act. The entries in the Day Book and the Ledger tally. The plaintiff deposes in support of the correctness of the entries. Most of the entries are corroborated by other evidence as pointed out above. Circumstantial evidence also goes to support the plaintiff's claim. When most of the items claimed are shown to be real by other independent evidence - there is no meaning in saying that each entry should be further corroborated apart from the evidence of the plaintiff himself. The decision in A.S. Firo vs. P.P.S. Khusro appeal and cross (A.S. 1933) 736 cited on behalf of the appellant only says that mere filing of accounts will not be sufficient to prove a liability. Here there is other evidence to support the plaintiff's claim. Though it is

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seen that several letters and bills have been sent by the plaintiff the defendant has failed to produce them. He has not also produced his accounts. His letters as pointed out - above admit that accounts were due from him to the plaintiff and that he was finding it difficult to discharge them. In the face of these the lower court was quite right in disbelieving the defendant and accepting the plaintiff's evidence and granting him a decree.

6. In the result the appeal is dismissed with costs.

Sd. Joseph Vithayathil, Judge.  
Sd. P.D. Mandana Menon, Judge.

12th Dec 1953.

Compared by P.S. Chinnai. (True copy)  
M. S.

Dist. Registrar for Registrar.